?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 29.03.2019
*CORAM
THE HONOURABLE MR.JUSTICE. R.MAHADEVAN

+W.P.(MD)No.19568 of 2017
and
WMP(MD)No.15854 of 2017

#R.Jayaprabha
.. Petitioner
Vs.

$1.The Chief Educational Officer,
District Collectorate Campus,
Virudhunagar.

2.The District Educational Officer,
Srivilliputhur,
Virudhunagar District.

3.The Secretary,
Sri Rao Bahadur A.K.D. Dharma Raja
Girls Higher Secondary School,
Rajapalayam ? 626 117. .. Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the entire records relating to the impugned order passed by the 2nd respondent in Athimu.No.1106/A2/2017 dated 13.04.2017 and quash the same and direct the 2nd respondent to approve the appointment of the petitioner namely Jayaprabha as BT Teacher (Tamil) in the 3rd respondent school namely Sri Rao Bahadur A.K.D. Dharamaraja Girls Higher Secondary School, Rajapalayam with effect from 15.04.2015 with all consequential attendant benefits with salary arrears etc as per the proposal submitted by the third respondent school dated 14.03.2017.

!For Petitioner : Mr.A.Sivaji
^For R1 & R2 : Mrs.S.Srimathy
Special Government Pleader
For R3 : Mr.C.Jegannathan
for M/s.Veera Associates

:ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 13.04.2017 and consequently to approve the appointment of the petitioner as BT Teacher (Tamil) in the third respondent school with effect from 15.04.2015 with all consequential benefits.

2.Heard the learned counsel for the petitioner; the learned Special Government Pleader for the respondents 1 and 2 and the learned counsel for the third respondent.

3.The case of the petitioner is that she was appointed as BT Teacher (Tamil) in the third respondent school and the appointment was made in respect of sanctioned post. The proposal sent to the second respondent for approval of appointment of the petitioner was returned by the impugned order dated 13.04.2017 stating that communal roster has not been followed. Challenging the same, this writ petition has been filed.

4.The learned counsel appearing for the petitioner submitted that the post is reserved for SC(A) Arunthathiyar community. Since no Arunthathiar Community candidate is available, the post can be filled up by other SC candidates, for which, the petitioner is eligible. But the same has not been considered by the second respondent. The learned counsel further submitted that in an identical issue, a Division Bench of this Court passed judgment in WA(MD)No.1268 of 2013 dated 05.03.2014, wherein paragraphs 8, 9 and 10 read as follows:

8.Technically, the stand taken by the appellants appears to be correct at first blush. But unfortunately, the appellants have lost sight of one important fact. Tamil Nadu Act 4 of 2009 was not given retrospective effect. It came into effect only on 29.04.2009. The vacancy sought to be filled up by the respondent arose on 10.03.2008 and the application for permission to fill up the same was made immediately by the respondent. If only the appellants had granted permission immediately, this problem would not have happened. More over, while granting permission by the communication dated 19.04.2010, the appellants themselves did not quote the Government Order and the Act. They permitted the respondent to select the candidate belonging to the Schedule Caste. Therefore, the respondent cannot now be found fault with for not selecting a candidate belonging to Arunthathiyar Community from among the Schedule Castes.

9. Even after amendment, the position has undergone only a small change. The reservation for Arunthathiyar is actually an internal reservation within the members of the Schedule Caste. Therefore, if a person belonging to Arunthathiyar Community is not available, it is always open to the appointing authorities to appoint any member of the Schedule Caste.

10. In view of the above, we find nothing wrong in the order of the learned single Judge. Hence, the writ appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

5.The learned Special Government Pleader as well as the learned counsel for the third respondent have agreed to consider the case of the petitioner in line with the above judgment rendered by this Court. However, it is submitted that since Arunthathiar community candidates are not available, it is for the third respondent to approach the competent authorities for appropriate orders to fill up the said post by the candidates, who belong to Scheduled caste.

6.In such view of the matter, this writ petition is disposed of,

directing the third respondent to approach the authority concerned for appropriate orders in respect of appointment of a scheduled caste candidate in the reserved post of SC (A) Arunthathiar community, within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the authorities concerned shall consider the case of the petitioner in the light of the judgment rendered by this Court in WA(MD)No.1268 of 2013 dated 05.03.2014, within a period of four weeks thereafter. No costs. Consequently, WMP(MD)No.15854 of 2017 is closed.

29.03.2019
Index : Yes/No
Internet : Yes/No

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To

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Virudhunagar.

2.The District Educational Officer,
Srivilliputhur,
Virudhunagar District.